IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

Trust Petition No. 6 OF 2004

Rajkumar Kudilal Seksaria & anr. ... Petitioners

Mr. J. P. Sen with
Ms. S. R. Moghe i/b. Mehta & Girdharilal for petitioner

CORAM: A. S. AGUIAR J.
Date: December, 17, 2004
P.C.

1. By this petition the petitioners, who are trustees of Gordhandas Govindram Family Trust, seek sanction of this court for sale of property consisting of land with building and 36 tenements thereon, more particularly described in exhibit "C" to the petition. The petitioners have already entered into an agreement for sale of the said property dated 21st May 2004 which is at Exhibit "E" to the petition. When the matter came up before this court on 3rd September 2004 this court (Vajifdar J) directed that the trust petition, and in particular the reliefs sought therein, be advertised in Free Press Journal, Navbharat Times and Janmabhoomi, inviting the persons interested in the trust to appear before this court on the returnable date of this petition i.e. 3rd November 2004. The petitioners have accordingly advertised the sale of the property in the aforesaid papers and

have filed affidavit of one Sandeep Kamble an employee of advocate for petitioners, proving compliance of the order dated 3.9.2004.

2. The Trust deed which is at Exhibit “A” to the petition does not contain any provision for sale or alienation of the trust property but sets out the various objects of the trust and directions to the trustees for executing the objectives of the trust, more particularly set out in para 3 of the Trust deed. Since the trust deed contains no provision for alienation of the trust property learned Advocate Mr. Sen for the petitioners places reliance on the judgment of the Calcutta High court in the matter of Smt. Nilima Ghosh and anr. Vs Prakriti Bhushan Mitter, reported in AIR 1982 Calcutta 14, wherein section 34 of the Trust Act which deals with management and administration of the trust property was considered wherein the Calcutta High Court held as follows:

> “Under the provisions of section 34 of the Trusts Act a question relating to the management and administration of trust property should be referred to the principal civil court of original jurisdiction for its

> opinion. Section 34 of the Act may have conferred wider powers on the court specified therein to authorise sale of a trust property by the trustee even if the trustee is not expressly authorised to do so by the deed where such a sale becomes a necessity for preservation or development of the estate, but that makes it all the more incumbent for the parties to approach that court because that Court is not only competent to give the opinion now sought for but also is only competent court to help the parties in solving their real problem viz., to effect sale of the Trust property."

3. It is the submission of the learned Advocate for the petitioners that the property of the trust consists of land with building having ground plus three floors and partly ground plus two floors and 36 rooms and is fully rented out and there are in all 34 tenements. The said property was purchased by the Trust by conveyance dated 21st January 1943 and the building was constructed prior to 1915. The building is thus very old and in a dilapidated condition and there is no

FSI available in the suit property. It is further submitted that after making the payments of all outgoings including the salary, only a paltry sum ofRs.942/- per month is the net income derived by the Trust. This paltry amount is inadequate to satisfy and carry out the objects of the Trust.

4. It is further pointed out that the agreement with the purchasers at exhibit 'E' stipulates that the purchasers have agreed to purchase the said property for a lump sum price of Rs.23,50,000/-. It is submitted that the income that will be derived from investing the total consideration of Rs.23 lakhs will fetch the trust a monthly income of Rs.10,000/- and this would help in fulfilling the aspirations of the settler and carrying out the objects of the Trust. The petitioners before the court are the present Trustees of the Trust. The Trust property stands in their name as can be seen from the certificate of transfer dated 22nd June 2004, Exhibit 'D' to the petition. As stated earlier, the sale of the property has been advertised inviting objections if any. However, no one has moved this court, nor has any objection been filed. No caveat has been filed by anyone. In the circumstances mentioned above it appears that the sale of the Trust property is in the interest of the of the Trust and beneficiaries. Hence petition is allowed. Petition made absolute accordingly in terms of

prayer clause (a). Costs to come out from the sale proceeds of the Trust property. Petition stands disposed of.

(A. S. AGUIAR J.)